

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of the California Public Utilities	)	CC Docket No. 99-200
Commission for Delegated Authority to	)	
Implement Specialized Transitional Overlays	)	

**REPLY COMMENTS OF PAC-WEST TELECOMM, INC.  
IN SUPPORT OF THE PETITIONS FOR RECONSIDERATION OF  
THE COMMISSION SEPTEMBER 9, 2005 ORDER  
PERMITTING CALIFORNIA TO IMPLEMENT A SPECIALIZED OVERLAY**

On October 11, 2005, both Pac-West Telecomm, Inc. ("Pac-West") and the California Cable and Telecommunications Association ("CCTA")<sup>1</sup> filed petitions for reconsideration of the *California Specialized Overlay Delegation Order* ("Order").<sup>2</sup> As detailed in both petitions, the specialized overlay plan proposed by the California Public Utilities Commission ("CPUC")<sup>3</sup> is contrary to law, the public interest and to Commission policy. Pac-West submits these reply comments to highlight to the Commission that reconsideration of the *Order* is necessary for legal, policy and practical reasons as detailed in its petition and that filed by CCTA. Further, Pac-West emphasizes that not one party, including the CPUC, filed a written opposition to the

---

<sup>1</sup> See Petition of the California Cable and Telecommunications Association for Reconsideration, CC Docket No. 99-200 (filed Oct. 11, 2005).

<sup>2</sup> *In the Matter of Petition of the California Public Utilities Commission for Delegated Authority to Implement Specialized Transitional Overlays*, Order, CC Docket 99-200, FCC 05-2439 (rel. Sept. 9, 2005) ("Order").

<sup>3</sup> *Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Petition of the California Public Utilities Commission and the People of the State of California for Authority to Implement Specialized Overlay Area Codes, CC Docket Nos. 99-200 & CC Docket No. 96-98 (filed Oct. 6, 2003).

petitions for reconsideration.<sup>4</sup> Due to the lack of opposition and unlawfulness of the CPUC proposal, Pac-West submits that the Commission should rescind its grant of delegated authority to the CPUC.

**I. THE CPUC’S PLAN TO IMPLEMENT SPECIALIZED OVERLAYS VIOLATES THE TELECOMMUNICATIONS ACT OF 1996 AND IS COUNTER TO COMMISSION PRECEDENT**

The CPUC’s overlay plan would segregate certain technologies and services into specific area codes. Thus, users of traditional, circuit-switched or cellular telephone services would continue to receive telephone numbers from existing area codes throughout the state of California, while customers that instead choose to use Voice over Internet Protocol (“VoIP”) services and services described but not defined by the CPUC as “non-geographic-based,”<sup>5</sup> would be forced to obtain area codes from one of two specialized area code overlays. Such a plan is inherently discriminatory, violates the Telecommunications Act of 1996 (the Act), and is an unjustified departure from Commission precedent.

The Act requires the Commission to encourage competition in the telecommunications marketplace. Section 251(e) of the Act requires the Commission “to make [telecommunications] numbers available on an equitable basis.” In limiting VoIP and the hodgepodge of other services to the specialized overlays, the CPUC would be placing providers and consumers of these services at an enormous disadvantage. Customers seeking to use new technologies would be immediately discouraged as they would be required to either change their existing telephone

---

<sup>4</sup> See Petitions for Reconsideration of Action in Rulemaking Proceeding, FCC Report No. 2747, 71 Fed. Reg. 2042 (Jan. 12, 2006) (establishing Jan. 27, 2006 as the deadline for oppositions).

<sup>5</sup> The CPUC proposes to include in the specialized overlay telephone numbers used for the provision of OnStar, E-fax, business (but not residential) modems and fax machines, automatic teller machines, paging, Internet telephony, VoIP and dial-up Internet service provider services.

number to make use of the technology or obtain a telephone number from an unfamiliar area code.<sup>6</sup> As such, implementing the CPUC's proposal would be inconsistent with Section 251(e) of the Act.

In interpreting Section 251(e) of the Act, the Commission adopted the rule that numbering practices must not "unduly favor or disfavor any particular telecommunications industry segment or group of telecommunications consumers."<sup>7</sup> But the CPUC proposal would require consumers of VoIP and other services identified by the CPUC to draw telephone numbers from certain area codes. The CPUC's specialized overlay plan violates this Commission rule in that it inherently discriminates against VoIP and the other services subject to obtaining numbering resources exclusively from the specialized overlays. The discriminatory effects alone of the CPUC's plan require the Commission to rescind the *Order*.

Additionally, the CPUC's specialized overlay plan frustrates local number portability in violation of the Act. Section 251(b)(2) of the Act requires carriers to allow for the portability of telephone numbers among different service providers. Left entirely unanswered by the CPUC is how number portability would operate if the specialized overlay plan was implemented. A customer using VoIP services would receive a number from one of the specialized overlays. If that customer later chose to switch to a traditional circuit-switched service, one of two things could happen: either the number from the overlay code would be ported and now used in the provision of a circuit-switched service (undermining both the purpose and utility of the specialized overlay), or the customer would be prohibited from porting the telephone number to

---

<sup>6</sup> See, e.g., Sprint Nextel Comments, at 3.

<sup>7</sup> See 47 C.F.R. § 52.9(a)(2).

the circuit-switched service (in violation of the Act).<sup>8</sup> The ability of customers to port numbers among different service providers is essential to competition in the telecommunications marketplace. Without such portability, consumers are discouraged from changing service providers regardless of whether switching to a new service would cut costs or allow the consumer to access additional features and functionalities. Until issues surrounding number portability are resolved by the CPUC, the Commission should not allow the *Order* to stand.

Aside from violation of the Act and Commission rules, the CPUC proposal also does not meet the requirements the Commission established in the *Third NRO Order*<sup>9</sup> in allowing state commissions to seek authority to establish specialized overlays. In determining whether to grant state commissions' request for delegated authority to implement specialized overlays, the Commission adopted certain criteria that state commissions must satisfy.<sup>10</sup> As detailed by Pac-West in its petition, the CPUC failed to address numerous criteria including the cost and benefits associated with the specialized overlays, the areas nearing exhaust where relief is needed, the technologies or services to be included in the specialized overlays, and when the specialized overlays would be implemented.<sup>11</sup> The Commission should withdraw its grant of delegated authority to the CPUC until the CPUC makes a satisfactory showing that it is able to meet the Commission's criteria for implementing specialized overlays.

The *Order* also departs from existing Commission policy without explaining why such a radical departure is necessary or justified. The Commission's *Ameritech Order* rejected a

---

<sup>8</sup> See, e.g., Verizon Comments at 4 (Jan. 27, 2006).

<sup>9</sup> See *Numbering Resource Optimization*, Third Report and Order and Second Order on Reconsideration in CC Docket No. 96-98 and CC Docket No. 99-200, CC Docket Nos. 99-200, 96-98 & 95-116 (rel. Dec. 28, 2001) ("*Third NRO Order*"), ¶ 78.

<sup>10</sup> See *id.*

<sup>11</sup> See Pac-West Petition, at 7.

proposal that would have implemented a wireless service-only overlay plan.<sup>12</sup> The Commission found discriminatory a plan that would have required cellular and paging carriers to draw numbering resources exclusively from the overlay area code while allowing wireline carriers to continue to receive numbering resources from the existing area code.<sup>13</sup> But while the CPUC's specialized overlay plan would have an identical discriminatory affect on VoIP, paging and other service providers, the *Order* does not justify a departure from existing Commission precedent and must be reconsidered for this reason as well.

## **II. THE CPUC'S PROPOSAL FAILS TO OPTIMIZE THE USE OF NUMBER RESOURCES**

An additional reason for withdrawing its grant of authority is that the CPUC specialized overlay constitutes poor number resources optimization policy. In creating two new statewide specialized overlays, the CPUC recognizes that many issues abound. For instance, Pac-West provides its customers with a full range of service offerings. Some customers are VoIP providers, others are large businesses that use telephone numbers for a variety of purposes, and still others are Internet service providers. Pac-West would need telephone numbers from existing area codes and the specialized overlay in order to continue to provide its current services. If implemented, Pac-West would assign telephone numbers from existing area codes to customers using traditional, circuit-switched services and from the specialized overlay area codes for VoIP and the other services subject to the specialized overlays. For large business customers, Pac-West may have to assign telephone numbers from both existing area codes and the specialized overlay if such a customer has numerous facsimile lines or chooses to use VoIP applications for certain operating units. The CPUC's proposal would reduce Pac-West's

---

<sup>12</sup> See generally Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech – Illinois, Declaratory Ruling and Order, IAD File No. 94-102, (rel. Jan. 23, 1995) (“*Ameritech Order*”).

<sup>13</sup> See *id.*

numbering utilization within thousands-blocks as demand for telephone numbering resources would be split amongst telephone numbers from segregated area codes leaving more telephone numbers stranded than under existing numbering assignment procedures. In this way, number resource optimization would be thwarted rather than enhanced. As the CPUC has not established that the proposed implementation of specialized overlays will lead to the efficient use and assignment of telephone numbering resources, the Commission should reconsider its decision and withdraw its delegation of authority.

### **III. THE CPUC'S PROPOSAL IS IMPRACTICAL**

For a myriad of reasons, the CPUC proposal is simply impractical. The CPUC proposal would require carriers to track the specific usage of telephone numbers. Carriers do not have the means to determine what type of service is associated with a particular telephone number. Presumably, this would require carriers to survey customers. Further, customers do not necessarily use a telephone number for one purpose. Companies that use a range of numbers have the ability to dynamically change the use of a telephone number from voice, to facsimile, to VoIP. Thus, any survey would quickly become outdated and inadequate setting aside the administrative costs surveying would impose on carriers.

Also, telephone numbers are assigned in a manner to allow for the rating and routing of calls.<sup>14</sup> When an overlay area code is introduced, the overlay area code uses the same geographic boundaries as existing area codes and is associated with the same central offices as existing area codes. The CPUC's proposal will disrupt the rating and routing of calls as the two specialized overlays will each encompass numerous area codes. As a result, the telephone

---

<sup>14</sup> See, e.g., Pac-West Petition at 6.

number will no longer be able to provide sufficient information to route and rate the call.<sup>15</sup> Until the CPUC is able to resolve this important deficiency, the Commission should withdraw the delegation order.

#### IV. CONCLUSION

Both Pac-West and CCTA have demonstrated that the Commission should reconsider its *Order* and withdraw its delegation of authority to the CPUC. No party filed oppositions to these petitions for reconsideration, including the CPUC. In light of the fact that there is no opposition to reconsideration and there are considerable legal, policy and implementation questions that remain unanswered, the Commission must reconsider and rescind its *Order*. For the foregoing reasons, Pac-West respectfully requests that Commission rescind its *Order* allowing the CPUC to implement technology-specific specialized overlays in that state. Implementing the specialized overlays will violate the Act, depart from established Commission policy without justification, violate FCC-established criteria for implementation of specialized overlays, fail to optimize the use of telephone numbers, is administratively unworkable, and will disrupt call rating processes.

Respectfully submitted,

\_\_\_\_\_  
/s/  
Richard M. Rindler  
SWIDLER BERLIN LLP  
3000 K Street, N.W.  
Washington, D.C. 20007  
Tel: (202) 424-7500  
Fax: (202) 424-7647

Counsel to Pac-West Telecomm, Inc.

February 6, 2006

---

<sup>15</sup> See, e.g., Verizon Comments at 5 (filed Jan. 27, 2006).

## **CERTIFICATE OF SERVICE**

I, Linda Crelling, do hereby certify that on this 6<sup>th</sup> day of February, 2006, I caused to be served a true and correct copy of the foregoing Reply Comments of Pac-West Telecomm, Inc. by electronic filing or U.S. mail to the following:

<sup>+</sup> Marlene H. Dortch Office of the Secretary Federal Communications Commission The Portals, 445 12 <sup>th</sup> Street, S.W. Room TW-A325 Washington, D.C. 20554	Randolph L. Wu Sindy J. Yun 505 Van Ness Ave. San Francisco, CA 94102
+Best Copy and Printing, Inc. The Portals, 445 12 <sup>th</sup> Street, S.W. Room TW-A325 Washington, D.C. 20554	Jerome Fitch Candelaria California Cable & Telecommunications Association 360 22 <sup>nd</sup> Street, Suite 750 Oakland, CA 94612
Luisa L. Lancetti Charles W. Mckee Sott R. Freiermuth Sprint Nextel Corporation 401 9 <sup>th</sup> Street, NW Suite 400 Washington, DC 20004	Karen Zacharia Amy P. Rosenthal Verizon 1515 North Courthouse Road Suite 500 Arlington, VA 22201-2909
Philip L. Verveer Karen Henein Counsel for j2 Global Communications, Inc. Willkie Farr & Gallagher LLP 1875 K Street, NW Washington, DC 20006	

/s/ Linda Crelling  
Linda Crelling

---

<sup>+</sup> **VIA ELECTRONIC FILING**